

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 16, 75 & 331

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

AN ACT

RELATING TO TAXATION; CREATING THE HIGH-WAGE JOBS TAX CREDIT
AND THE RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. TAX CREDIT--QUALIFYING HIGH-WAGE JOBS.--

A. A taxpayer who is an eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each new high-wage economic-based job. The credit provided in this section may be referred to as the "high-wage jobs tax credit".

B. The high-wage jobs tax credit may be claimed and allowed in an amount equal to ten percent of the wages and benefits distributed to an eligible employee in a new high-wage economic-based job, but shall not exceed twelve thousand dollars (\$12,000).

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1 C. The high-wage jobs tax credit may be claimed by
2 an eligible employer for each new high-wage economic-based job
3 performed for the year in which the new high-wage economic-
4 based job is created and for the three following qualifying
5 periods.

6 D. A new high-wage economic-based job shall not be
7 eligible for a credit pursuant to this section unless the
8 eligible employer's total number of employees with new high-
9 wage economic-based jobs on the last day of the qualifying
10 period at the location at which the job is performed or based
11 is at least one more than the number on the day prior to the
12 date the job was created.

13 E. With respect to each new high-wage economic-
14 based job for which an eligible employer seeks the high-wage
15 jobs tax credit, the employer shall certify:

16 (1) the amount of wages paid to each eligible
17 employee in a new high-wage economic-based job during each
18 qualifying period;

19 (2) the number of weeks the position was
20 occupied during the qualifying period;

21 (3) whether the new high-wage economic-based
22 job was performed or based in:

23 (a) a municipality with a population of
24 forty thousand or more according to the most recent federal
25 decennial census; or

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1 (b) a municipality with a population of
2 less than forty thousand according to the most recent federal
3 decennial census or in the unincorporated area of a county; and

4 (4) the total number of employees employed by
5 the employer at the job location on the day prior to the
6 qualifying period and on the last day of the qualifying period.

7 F. To receive a high-wage jobs tax credit with
8 respect to any qualifying period, an eligible employer shall
9 apply to the taxation and revenue department on forms and in
10 the manner prescribed by the department. The application shall
11 include a certification made pursuant to Subsection E of this
12 section.

13 G. The credit provided in this section may be
14 deducted from the modified combined tax liability of a
15 taxpayer. If the credit exceeds the modified combined tax
16 liability of the taxpayer, the excess shall be refunded to the
17 taxpayer.

18 H. As used in this section:

19 (1) "benefits" means any employee benefit plan
20 as defined in Title 1, Section 3 of the federal Employee
21 Retirement Income Security Act of 1974, 29 U.S.C. 1002;

22 (2) "eligible employee" means an individual
23 who is employed by an eligible employer and who is a resident
24 of New Mexico; "eligible employee" does not include an
25 individual who:

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1 (a) bears any of the relationships
2 described in Paragraphs (1) through (8) of 26 U.S.C. Section
3 152(a) to the employer or, if the employer is a corporation, to
4 an individual who owns, directly or indirectly, more than fifty
5 percent in value of the outstanding stock of the corporation
6 or, if the employer is an entity other than a corporation, to
7 an individual who owns, directly or indirectly, more than fifty
8 percent of the capital and profits interest in the entity;

9 (b) if the employer is an estate or
10 trust, is a grantor, beneficiary or fiduciary of the estate or
11 trust or is an individual who bears any of the relationships
12 described in Paragraphs (1) through (8) of 26 U.S.C. Section
13 152(a) to a grantor, beneficiary or fiduciary of the estate or
14 trust;

15 (c) is a dependent, as that term is
16 described in 26 U.S.C. Section 152(a)(9), of the employer or,
17 if the taxpayer is a corporation, of an individual who owns,
18 directly or indirectly, more than fifty percent in value of the
19 outstanding stock of the corporation or, if the employer is an
20 entity other than a corporation, of an individual who owns,
21 directly or indirectly, more than fifty percent of the capital
22 and profits interests in the entity or, if the employer is an
23 estate or trust, of a grantor, beneficiary or fiduciary of the
24 estate or trust; or

25 (d) is working or has worked as an

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1 employee or as an independent contractor for an entity that
2 directly or indirectly owns stock in a corporation of the
3 eligible employer or other interest of the eligible employer
4 that represents fifty percent or more of the total voting power
5 of that entity or has a value equal to fifty percent or more of
6 the capital and profits interest in the entity;

7 (3) "eligible employer" means an employer
8 that:

9 (a) made more than fifty percent of its
10 sales to persons outside New Mexico during the most recent
11 twelve months of the employer's modified combined tax liability
12 reporting periods ending prior to claiming a high-wage jobs tax
13 credit; and

14 (b) is eligible for development training
15 fund assistance pursuant to Section 21-19-7 NMSA 1978;

16 (4) "modified combined tax liability" means
17 the total liability for the reporting period for the gross
18 receipts tax imposed by Section 7-9-4 NMSA 1978 together with
19 any tax collected at the same time and in the same manner as
20 the gross receipts tax, such as the compensating tax, the
21 withholding tax, the interstate telecommunications gross
22 receipts tax, the surcharges imposed by Section 63-9D-5 NMSA
23 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978,
24 minus the amount of any credit other than the high-wage jobs
25 tax credit applied against any or all of these taxes or

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1 surcharges; but "modified combined tax liability" excludes all
2 amounts collected with respect to local option gross receipts
3 taxes;

4 (5) "new high-wage economic-based job" means a
5 job created by an eligible employer on or after July 1, 2004
6 and prior to July 1, 2009 that is occupied for at least forty-
7 eight weeks of a qualifying period by an eligible employee who
8 is paid wages calculated for the qualifying period to be at
9 least:

10 (a) forty thousand dollars (\$40,000) if
11 the job is performed or based in a municipality with a
12 population of forty thousand or more according to the most
13 recent federal decennial census; and

14 (b) twenty-eight thousand dollars
15 (\$28,000) if the job is performed or based in a municipality
16 with a population of less than forty thousand according to the
17 most recent federal decennial census or in the unincorporated
18 area of a county;

19 (6) "qualifying period" means the period of
20 twelve months beginning on the day an eligible employee begins
21 working in a new high-wage economic-based job or the period of
22 twelve months beginning on the anniversary of the day an
23 eligible employee began working in a new high-wage economic-
24 based job; and

25 (7) "wages" means wages as defined in

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1 Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).

2 Section 2. SHORT TITLE.--Sections 2 through 7 of this act
3 may be cited as the "Research and Development Small Business
4 Tax Credit Act".

5 Section 3. DEFINITIONS.--As used in the Research and
6 Development Small Business Tax Credit Act:

7 A. "department" means the taxation and revenue
8 department, the secretary of taxation and revenue or any
9 employee of the department exercising authority lawfully
10 delegated to that employee by the secretary;

11 B. "qualified research" means research:

12 (1) that is undertaken for the purpose of
13 discovering information that is technological in nature and the
14 application of which is intended to be useful in the
15 development of a new or improved business component of the
16 taxpayer; and

17 (2) in which substantially all activities
18 constitute elements of a process of experimentation related to
19 new or improved function, performance, reliability or quality,
20 but not related to style, taste, cosmetic or seasonal design
21 factors;

22 C. "qualified research and development small
23 business" means a business, including a corporation, general
24 partnership, limited partnership, limited liability company,
25 sole proprietorship or other similar entity, that:

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1 (1) employed no more than twenty-five
2 employees on a full-time-equivalent basis in any prior calendar
3 month;

4 (2) had total revenues of no more than ten
5 million dollars (\$10,000,000) in any prior fiscal year;

6 (3) did not in any prior calendar month have
7 more than fifty percent of its voting securities or other
8 equity interest with the right to designate or elect the board
9 of directors or other governing body of the qualified business
10 owned directly or indirectly by another business; and

11 (4) has made qualified research expenditures
12 for the period of twelve calendar months ending with the month
13 for which the credit is sought of at least twenty percent of
14 its total revenues for those twelve calendar months;

15 D. "qualified research expenditure" means an
16 expenditure directly related to qualified research, but does
17 not include any expenditure on research funded by any grant,
18 contract or similar mechanism by another person or governmental
19 entity, and does not include any expenditure on property that
20 is owned by a municipality or county in connection with an
21 industrial revenue bond project or expenditures for which the
22 taxpayer has received any credit pursuant to the Capital
23 Equipment Tax Credit Act, the Investment Credit Act or the
24 Technology Jobs Tax Credit Act; and

25 E. "taxpayer" means a person liable for payment of

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1 any tax, a person responsible for withholding and payment or
2 collection and payment of any tax or a person to whom an
3 assessment has been made if the assessment remains unabated or
4 the amount thereof has not been paid.

5 Section 4. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX
6 CREDIT--AMOUNT--ELIGIBILITY.--

7 A. A taxpayer that is a qualified research and
8 development small business is eligible for a credit in a
9 reporting period in an amount equal to the sum of all gross
10 receipts taxes, compensating taxes or withholding taxes due to
11 the state or payable by the taxpayer with respect to that
12 business for that reporting period. The credit provided in
13 this section may be referred to as the "research and
14 development small business tax credit".

15 B. A taxpayer is not eligible for the credit with
16 respect to a reporting period in a calendar month:

- 17 (1) before July 2004;
- 18 (2) that is more than thirty-five consecutive
19 calendar months after the first month for which a claim for the
20 credit is made by the taxpayer or by a person to whom the
21 taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978;
- 22 (3) after which the qualified research and
23 development small business employs more than twenty-five
24 employees on a full-time-equivalent basis;
- 25 (4) in a fiscal year of the qualified research

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1 and development small business after the first fiscal year in
2 which that business has total revenues in excess of ten million
3 dollars (\$10,000,000);

4 (5) after the calendar month in which more
5 than fifty percent of the qualified research and development
6 small business' voting securities or other equity interests
7 having the right to designate or elect the board of directors
8 or other governing body of that business are owned directly or
9 indirectly by another business;

10 (6) if the business was not a qualified
11 research and development small business in the twelve-calendar-
12 month period ending with that calendar month;

13 (7) during which the taxpayer is the
14 beneficiary of an industrial revenue bond issued by a
15 municipality or county;

16 (8) as to which the taxpayer claims any credit
17 pursuant to the Capital Equipment Tax Credit Act, the
18 Investment Credit Act or the Technology Jobs Tax Credit Act; or

19 (9) during which the taxpayer sold any goods
20 of which the taxpayer is not the manufacturer, unless the
21 taxpayer has received an appropriate nontaxable transaction
22 certificate for such sale or sales.

23 Section 5. CLAIMING THE CREDIT--CREDIT CLAIM FORMS.--The
24 taxpayer shall claim the research and development small
25 business tax credit within one year after the end of the

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1 reporting period to which the credit is applicable. The
2 department shall provide credit claim forms for the research
3 and development small business tax credit. A credit claim form
4 shall accompany any return in which the taxpayer claims the
5 credit, and the claim shall specify the amount of credit
6 intended to apply to each return.

7 Section 6. LIMITATION ON OTHER CREDITS.--Claiming the
8 research and development small business tax credit with respect
9 to a reporting period renders the taxpayer ineligible to claim
10 a credit with respect to that same reporting period pursuant to
11 the Capital Equipment Tax Credit Act, the Investment Credit Act
12 or the Technology Jobs Tax Credit Act.

13 Section 7. ADMINISTRATION OF THE ACT.--The department
14 shall administer the Research and Development Small Business
15 Tax Credit Act pursuant to the Tax Administration Act.

16 Section 8. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2004.

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